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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Human rights defenders

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the present report, submitted by the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, in accordance with General Assembly resolution 64/163.

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Report of the Special Rapporteur on the situation of human rights defenders

Summary

The present report maps out the rights provided for in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms and analyses what the different rights entail, as well as the various aspects necessary to ensure their implementation. The report also addresses the most common restrictions and violations faced by human rights defenders and provides recommendations to facilitate implementation by States of each right.

The aim of the report is twofold: to increase the awareness of States of the rights provided for in the Declaration and to serve as a practical tool to defenders working to ensure respect for the rights to which they are entitled under this instrument.

Despite efforts to implement the Declaration, human rights defenders continue to face numerous violations of their rights. It is hoped that the present report will contribute to the development of a safer and more conducive environment for defenders to be able to carry out their work. A more comprehensive commentary concerning the Declaration is available in the section on the work of the Special Rapporteur of the website of the Office of the United Nations High Commissioner for Human Rights.

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I. Introduction

1. The present report is the fourth submitted to the General Assembly by the present Special Rapporteur, and the eleventh report submitted by the mandate holder on human rights defenders to the Assembly since 2001. The report is submitted pursuant to Human Rights Council resolution 16/5 and Assembly resolution 64/163.

2. The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (the Declaration on Human Rights Defenders) reaffirms rights that are instrumental to the defence of human rights, including freedom of association, freedom of peaceful assembly, freedom of opinion and expression, and the right to access funding and to develop and discuss new human rights ideas. Implementing the Declaration is a prerequisite for the creation of a conducive environment for human rights defenders to be able to carry out their work.

3. Although some States have made efforts to guarantee that domestic legislation reflects the obligations of States that are contained in the Declaration and in other international human rights standards, the current trend in many countries is to pass laws and regulations restricting the space for human rights activities. Many national laws are incompatible with international standards and with the Declaration in particular. Even where efforts are made to adopt laws that are in line with international standards, their ineffective implementation often remains a problem.

4. Despite the fact that more than a decade has passed since the Declaration was adopted by the General Assembly, it is not an instrument that is sufficiently known, either to those who shoulder the main responsibility for its implementation, namely Governments, or to those whose rights it sets out to protect, human rights defenders. Accordingly, additional efforts are needed to improve understanding of the rights and responsibilities contained in the Declaration.[1]

5. The purpose of the present report is to fill this awareness gap by enhancing the understanding of States of the rights and responsibilities contained in the Declaration, as well as increasing awareness of this instrument among relevant non-State actors who can contribute to the development of a conducive environment for the work of defenders. Additionally, the report aims to build the capacity of human rights defenders to ensure respect for the rights that they are entitled to under the Declaration. The report is based mostly on the analysis of information received and reports developed by both mandate holders, the current Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, and her predecessor Hina Jilani.

6. The report is divided into 10 sections, each addressing a discrete right provided for in the Declaration, namely: the right to be protected, the right to freedom of assembly, the right to freedom of association, the right to access and communicate with international bodies, the right to freedom of opinion and

[1] Although not a legally binding instrument, the Declaration contains rights that are already recognized in many legally binding international human rights instruments, including the International Covenant on Civil and Political Rights. The Declaration specifies how the rights included in major human rights instruments apply to human rights defenders and their work. In addition, the Declaration was adopted by consensus by the General Assembly, which consequently represents States' strong commitment towards its implementation.

expression, the right to protest, the right to develop and discuss new human rights ideas, the right to an effective remedy and the right to access funding. A final section addresses permissible derogations to these rights. The Special Rapporteur then sets forth a series of recommendations regarding the implementation of each right.

7. In accordance with the mandate of the Special Rapporteur to integrate a gender perspective throughout her work, the present report refers to the specificities of the situation of women human rights defenders and the particular challenges they face. Women defenders are more at risk of being subjected to certain forms of violence, prejudices, exclusion, repudiation and other violations, than their male counterparts. This is often due to the fact that women defenders are perceived as challenging accepted sociocultural norms, traditions, perceptions and stereotypes about femininity, sexual orientation and the role and status of women in society. The term "women human rights defenders" in the present report refers to women who, individually or in association with others, act to promote or protect human rights, including women's rights. The term "women human rights defenders" can also refer to male human rights defenders working on women's rights as well as on gender issues more generally.

8. It is hoped that this report will contribute to the development of a safer and more conducive environment for defenders to be able to carry out their work. A more comprehensive commentary concerning the Declaration is available in the section on the work of the Special Rapporteur of the website of the Office of the United Nations High Commissioner for Human Rights (www2.ohchr.org/english/issues/defenders/index.htm).

II. Right to be protected

9. The State's duty to protect the rights of defenders from violations committed by States and non-State actors is derived from each State's primary responsibility and duty to protect all human rights, as enshrined in article 2 of the International Covenant on Civil and Political Rights, which establishes the obligation of States to guarantee all individuals within their territories and subject to their jurisdiction the rights recognized in the Covenant without discrimination. The Declaration on Human Rights Defenders establishes the State's duty to protect human rights defenders in the preamble to the Declaration as well as in its articles 2, 9 and 12.

10. The obligation of States to protect includes both negative and positive aspects. On the one hand, States must refrain from violating human rights. On the other hand, States should act with due diligence to prevent, investigate and punish any violation of the rights enshrined in the Declaration. In other words, States should prevent violations of the rights of defenders under their jurisdiction by taking legal, judicial, administrative and all other measures to ensure the full enjoyment by defenders of their rights; investigating alleged violations; prosecuting alleged perpetrators; and providing defenders with remedies and reparation. To enhance the protection of defenders, States should also harmonize their domestic legal frameworks with the Declaration on Human Rights Defenders.

11. The obligation to protect also involves ensuring that defenders do not suffer from violations of their rights at the hands of non-State actors. Failure to protect defenders could, in particular circumstances, engage the State's responsibility. For

instance, acts and omissions committed by non-State actors under the instructions, control or direction of the State can, under certain circumstances, give rise to State responsibility.

12. The Declaration reaffirms the responsibility of everyone not to violate the rights of others, including the responsibility of non-State actors to respect the rights of human rights defenders (see arts. 10, 11, 12 (3) and 19). Accordingly, all non-State actors, including armed groups, the media, faith-based groups, communities, private companies and individuals should refrain from taking any measures that would result in preventing defenders from exercising their rights.

13. To ensure the personal safety of defenders at imminent risk, States have developed different measures and protection programmes. Many States use their witness protection programmes; others have put in place protection measures, including establishing specialized investigative units for crimes against human rights activists, setting up early warning systems, providing police protection and bodyguards, and establishing programmes for emergency placement of defenders in other regions or countries.

14. Many of these measures, however, have received criticism with regard to their efficiency and sustainability. Witness protection programmes, for example, are not sufficient to provide for the safety of defenders since in most cases they have not been designed for that purpose and do not take their specific needs into account. In other instances, the outcome of risk assessments has failed to match the situation of vulnerability faced by defenders requesting protection. Further, protective measures have, on some occasions, failed to address the specificities of the profile of defenders pertaining to gender, ethnic affiliation, leadership position and place of residence. In other cases, bodyguards have transmitted information to intelligence agencies. Defenders have also raised concerns about the privatization of protection measures, which can place the responsibility for protection in the hands of private security companies. Defenders fear former paramilitaries could be employed by these companies.

15. Concerning protection measures for women defenders and those working on women's rights or gender issues, in the vast majority of cases there are no specific mechanisms in place or, where they do exist, they are often hindered by a lack of implementation, political will or gender specificity.

16. Adequate protection requires a comprehensive policy from Governments establishing an adequate environment which is respectful of the work of defenders, where the legal framework is in line with the Declaration's provisions, and those taking adverse actions against defenders are brought to justice. Addressing impunity, in line with article 12 of the Declaration, is a key step in ensuring a safe environment for defenders.

17. In every region of the world, defenders — including women defenders and those working on women's rights or gender issues — continue to face intimidation, threats, killings, disappearances, torture, ill-treatment, arbitrary detention, surveillance, administrative and judicial harassment and, more generally, stigmatization by both State and non-State actors. Violations faced by women defenders may take a gender-specific form, ranging from verbal abuse based on their sex, to sexual abuse and rape. Defenders also confront violations of the exercise of their rights to freedom of opinion and expression, access to information,

access to funding, free movement and freedoms of association and peaceful assembly. In many countries, a climate of impunity for violations committed against defenders prevails.

18. Specific situations impeding the work of human rights defenders and leading to a highly insecure environment include:

(a) The stigmatization to which both women defenders and their male counterparts are subjected in certain contexts, including accusations of being fronts for guerrilla movements, terrorists, political extremists, separatists, or working on behalf of foreign countries or their interests. Also, women defenders often face further stigmatization by virtue of their sex or the gender-based rights they advocate;

(b) Prosecution of defenders and criminalization of their activities. Defenders are arrested and prosecuted on false charges. Others are detained without charge, often without access to a lawyer, medical care or a judicial process, and without being informed of the reason for their arrest;

(c) Attacks by non-State actors and a climate of impunity. Non-State actors have been increasingly involved in attacks on human rights defenders. Guerrillas, private militias, vigilante groups and armed groups have been implicated in violence against defenders, including beatings, killings and various acts of intimidation. Private companies have also been directly or indirectly involved in acts of violence against defenders.

19. In addition, community leaders and faith-based groups are increasingly resorting to the stigmatization of — and attacks against — defenders working on issues such as the rights of lesbian, gay, bisexual and transgender persons, violence against women and domestic violence. Also, women human rights defenders working in the area of domestic violence and other types of violence against women are often pressured by family members or threatened by the perpetrators to drop cases.

20. In some parts of the world, the media has been involved in violations committed against human rights defenders, notably in relation to violations of their right to privacy. In certain States, defenders have been subjected to denigration campaigns in the press, although sometimes the perpetrators were State-owned outlets.

III. Right to freedom of assembly

21. In its articles 5 and 12, the Declaration on Human Rights Defenders recognizes the right to freedom of assembly and the legitimacy of participation in peaceful activities to protest against violations of human rights. The right to peaceful assembly is essential for human rights defenders; without the guarantee of this right and the protection against its violation by State officials and non-State entities, the ability of defenders to fulfil their role in the protection and promotion of human rights and fundamental freedoms is severely restricted.

22. The right to meet or assemble peacefully applies to every man and woman acting to promote and protect human rights, providing they accept and apply the principles of universality and non-violence. As women's inequality in the enjoyment

of rights is rooted in "tradition, history and culture, including religious attitudes",[2] States should ensure that these attitudes are not used to justify violations of women's right to equality before the law and to equal enjoyment of all rights,[2] including the right to freedom of assembly.

23. The Declaration protects numerous forms of assembly, from meetings inside private residences to conferences in public places, demonstrations, vigils, marches, picket lines and other kinds of assemblies, with the aim of promoting and protecting human rights. Also, this right can be exercised individually and in association with others. Accordingly, it is not necessary for a non-governmental organization to have legal personality to participate in assemblies, including a demonstration.

24. Human rights defenders must exercise these activities peacefully in order to be protected under the Declaration. The Special Rapporteur is concerned about the frequent excessive use of force by State agents in responding to situations involving freedom of assembly, which in some instances has provoked violent reactions from otherwise peaceful assemblies. Such behaviour clearly contravenes the Declaration and makes the State accountable for provocations that result in violence. Under the Declaration defenders are entitled to effective protection under national law against actions committed by the State that result in human rights violations. The Declaration also provides defenders with protection when protesting against violent acts of other groups or individuals. Consequently, the protection afforded in the Declaration covers violations committed by both State and non-State actors.

25. Concerning permissible restrictions, freedom of assembly can be subjected to limitations in accordance with applicable international obligations. Article 21 of the International Covenant on Civil and Political Rights defines the necessary requirements for the limitations to be considered permissible. Firstly, restrictions must be in conformity with the law — that is, restrictions can be imposed not only by law but also through a more general statutory authorization, such as an executive order or a decree.[3] Secondly, restrictions must be necessary in a democratic society, which means that limitations must be proportional — States must first exhaust any alternatives that limit the right to a lesser degree — and must comply with minimum democratic principles.[4] Finally, the only grounds upon which an interference with the right to peaceful assembly is permitted are: national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

26. Restrictions imposed on the right to freedom of assembly have been broadly applied to prohibit or disrupt peaceful human rights assemblies, frequently on the pretext of the need to maintain public order and relying on counter-terrorism legislation, arguments and mechanisms. The mandate holder has identified the following trends as violations of the right to freedom of assembly: (a) use of excessive force against defenders during assemblies; (b) arrest and detention of defenders while exercising their right to assemble or to prevent them from taking part in demonstrations; (c) threats against defenders and members of their families prior to, during or after their participation in a peaceful assembly; (d) judicial

[2] Human Rights Committee, general comment No. 28 concerning article 3 of the International Covenant on Civil and Political Rights (equality of rights between men and women), para. 5.

[3] Manfred Nowak, *United Nations Covenant on Civil and Political Rights: CCPR Commentary*, 2nd revised ed. (N.P. Engel, 2005), p. 490, para. 19.

[4] Ibid., p. 489, paras. 21 and 22.

harassment and prosecution of defenders; (e) travel restrictions imposed on defenders to prevent them from participating in assemblies outside their country of residence; and (f) restrictions imposed through legislative and administrative measures.

27. Women defenders often face more risks than their male counterparts when participating in collective public action because of perceptions of the traditional role of women in some societies, and they become targets of non-State actors. In some cases, retaliation against women defenders takes such forms as rape and sexual assault, which can have adverse social consequences in addition to causing physical and psychological harm.

IV. Right to freedom of association

28. The right to freedom of association is recognized in many international and regional instruments, including the Declaration on Human Rights Defenders, which provides in article 5 for the right of everyone, individually and in association with others, to form, join and participate in non-governmental organizations, associations or groups. The Declaration underscores that the promotion and protection of human rights is a legitimate purpose for an association to pursue.

29. The right to freedom of association applies to every man and woman working to promote and protect human rights, providing they accept and apply the principles of universality and non-violence.

30. The right of women to participate in public life, including through the promotion and protection of human rights, is contained in the Universal Declaration of Human Rights, as well as in various international treaties. Under article 7 of the Convention on the Elimination of All Forms of Discrimination against Women, States agree to take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, to ensure that women enjoy the right to, inter alia, participate in non-governmental organizations and associations concerned with the public and political life of the country on equal terms with men.

31. There are both negative and positive obligations on States arising from the right to freedom of association, including the obligation to prevent violations of this right, to protect those exercising this right and to investigate violations of this right. Given the importance of the role that human rights defenders play in democratic societies, the free and full exercise of this right places a duty on States to create legal and real conditions in which defenders can freely carry out their activities. Also, although associations are required to have some kind of institutional structure, they do not need to assume a legal personality to operate and de facto associations are equally protected under the Declaration.

32. Concerning permissible restrictions, the right to freedom of association is not absolute and it can be subjected to limitations in accordance with applicable international obligations. The International Covenant on Civil and Political Rights (art. 22) specifically details the requirements for such limitations to be admissible. For any restriction on the right to freedom of association to be valid, it must meet the following conditions:

(a) It must be provided by law — that is through an act of Parliament or an equivalent unwritten norm of common law. Limitations are not permissible if introduced through Government decrees or other similar administrative orders;

(b) It must be necessary in a democratic society. The State must demonstrate that the limitations are necessary to prevent a real threat to national security or the democratic order and that other less invasive measures are not adequate to achieve this purpose;

(c) Such limitations may only be imposed in the interest of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

33. This provision, read together with articles 5 and 17 of the Declaration on Human Rights Defenders, must be understood to involve the protection of human rights organizations that are critical of State policies, that publicize human rights violations perpetrated by authorities, or that question the existing legal and constitutional framework.

34. The Special Rapporteur has observed that in many countries national laws that regulate the functioning of non-governmental organizations impose severe restrictions on their registration, funding, management and operation. In particular, domestic legislation has been used to interfere with the internal management and activities of non-governmental organizations, including the placing of restrictions on the types of activities that civil society organizations are allowed to carry out without prior Government approval. The discretionary interpretation of existing laws has also permitted authorities to initiate legal proceedings against human rights organizations for minor infractions or to dissolve them without recourse to appropriate remedies or judicial supervision. In other instances, legislation seems to be in accordance with international standards, but registration procedures have been used arbitrarily to deny protection to human rights non-governmental organizations that are very critical of the Government.

V. Right to access and communicate with international bodies

35. The right to access and communicate with international bodies, as recognized in the Declaration on Human Rights Defenders, is contained in the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (art. 11), the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (art. 15), and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (art. 13). The optional protocols include a specific provision asking States parties to take all appropriate measures to ensure that individuals under their jurisdiction are not subject to ill-treatment or intimidation, or prejudiced in any way, for having communicated with or provided information to the monitoring bodies of the respective instruments.

36. This right is also protected under other relevant provisions such as the right to freedom of movement and the right to freedom of expression.[5] The Declaration recognizes the right to access and to communicate with international bodies under articles 5 (c) and 9 (4). By referring explicitly to this right under two separate provisions, the Declaration recognizes that accessing and communicating with international bodies are essential for human rights defenders to carry out their work and to alert the international community to human rights problems and bring key cases to the attention of regional and international human rights mechanisms.

37. The Declaration protects a wide range of collaboration activities with international bodies and agencies, from the submission of information or complaints related to specific cases to the presentation of information on the internal human rights situation in a particular country at international human rights venues.[6] As regards the different bodies and mechanisms that defenders can engage with, the Declaration provides for the right to communicate with a wide range of institutions and mechanisms, including non-governmental organizations, intergovernmental organizations and international bodies. These mechanisms can include United Nations bodies, including United Nations representatives and mechanisms, such as treaty bodies, special procedures, the universal periodic review mechanism and field presences of the Office of the United Nations High Commissioner for Human Rights, and other bodies outside the United Nations system.

38. The mandate on human rights defenders has underscored how the United Nations human rights treaty bodies and the various special procedures of the Human Rights Council depend to a great extent on the information provided to them by human rights defenders. This can be used as a valuable early warning system to alert the international community to a developing or imminent threat to peace.

39. In relation to the protection afforded to defenders that collaborate with international mechanisms, the Declaration specifies the obligation of States to take the necessary measures to protect defenders in the exercise of their rights (art. 12 (2)). Furthermore, non-State actors can be held accountable for violations of the rights of defenders amounting to offences or crimes under national law.

40. The Human Rights Council and its predecessor, the Commission on Human Rights, have also addressed this issue through several resolutions and have requested the Secretary-General and the United Nations High Commissioner for Human Rights to report on cases of individuals or groups who have been intimidated or suffered reprisals for having cooperated or attempted to cooperate with the United Nations, including its representatives and mechanisms, in the field of human rights (see Human Rights Council resolution 12/2).

41. Under the mandate, there have been interventions in cases where human rights activists have not been granted permission to leave their countries to participate in international human rights events, including the Human Rights Council, or have been harassed or subjected to serious reprisals upon return to their homes from these

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[5] See Human Rights Committee, Concluding observations on Uzbekistan (CCPR/CO/83/UZB, para. 19) and Human Rights Committee, Concluding observations on Morocco (CCPR/CO/82/MAR, para. 18), cited in "Right to access international bodies", Human Rights Defenders Briefing Papers series (International Service for Human Rights, 2009), pp. 5 and 6.

[6] See also "Right to access international bodies", Human Rights Defenders Briefing Papers series (International Service for Human Rights, 2009), p. 5.

events. There have also been interventions in cases of individuals who have been targeted after they have submitted information or complaints to international human rights mechanisms, in particular under the mandate on human rights defenders and other special procedures of the Human Rights Council. The mandate holder remains extremely concerned about allegations received reporting acts of intimidation, threats, attacks, arbitrary arrests, ill-treatment, torture and killings of human rights defenders who collaborated with the United Nations or other international mechanisms.

42. In addition to the cases reported directly to the mandate holder on the situation of human rights defenders, the reports of the Secretary-General related to cooperation with representatives or mechanisms of United Nations human rights bodies contain descriptions of situations in which persons have reportedly been intimidated or suffered reprisals by Governments and non-State actors for seeking to cooperate or having cooperated with the United Nations, its representatives and mechanisms in the field of human rights, for having provided testimony or information to them; for having availed themselves of procedures established by the United Nations; for having provided legal assistance for this purpose; for having submitted communications under procedures established by human rights instruments; or for being relatives of victims of human rights violations or for having provided legal or other assistance to victims. For example, the cases of reprisals described in the 2010 report of the Secretary-General on cooperation with the United Nations, its representatives and mechanisms in the field of human rights (A/HRC/14/19) include instances of attacks, threats, intimidation and harassment; detention, imprisonment and physical violence against defenders, including murder; and campaigns aimed at stigmatizing or delegitimizing the activities of human rights defenders. These acts are aimed at hampering or preventing individuals and groups from cooperating with the United Nations, its representatives and mechanisms (ibid.).

VI. Right to freedom of opinion and expression

43. The right to freedom of opinion and expression is of crucial importance to the work of human rights defenders. Without this right defenders would not be able to perform their monitoring and advocacy work to promote and protect human rights. This right applies to both men and women promoting and protecting human rights, providing they accept and apply the principles of universality and non-violence. In the case of women human rights defenders, States need to ensure that tradition, history, culture and religious attitudes are not used to justify violations of women's right to equality before the law and to the equal enjoyment of all rights.[7]

44. Article 6 of the Declaration recognizes three different aspects of the right to equality before the law and equal enjoyment of all rights: (a) the right to hold opinions without interference; (b) the right of access to information; and (c) the right to impart information and ideas of all kinds. With regard to the first aspect, the right to hold opinions, no restrictions are permitted.[8]

[7] Human Rights Committee, general comment No. 28, para. 5.

[8] Human Rights Committee, general comment No. 10 concerning article 19 of the International Covenant on Civil and Political Rights (freedom of opinion), para. 1.

45. Concerning the other two aspects, article 19 (3) of the International Covenant on Civil and Political Rights establishes that "the right to freedom of expression carries with it special duties and responsibilities and for this reason certain restrictions on the right are permitted, which may relate either to the interests of other persons or to those of the community as a whole. However, when a State party imposes certain restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself."[9] According to article 19 (3), restrictions must be "provided by law" and must be justified as being "necessary" for one of the following purposes: (a) respect of the rights or reputations of others; and (b) the protection of national security or of public order (*ordre public*), or of public health or morals.[10]

46. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has emphasized that restrictions on the following dimensions of the right to freedom of expression are not permissible:

(a) Discussion of Government policies and political debate; reporting on human rights, Government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups;

(b) The free flow of information and ideas, including practices such as the banning or closing of publications or other media and the abuse of administrative measures and censorship;

(c) Access to or use of information and communications technologies, including radio, television and the Internet (see A/HRC/14/23, para. 81).

47. The fulfilment of this right requires States to comply with both positive and negative obligations, including abstaining from interfering with the enjoyment of the right; protecting the right by working to prevent, punish, investigate and provide redress for harm caused by private persons or entities; and taking positive measures for the realization of the right (ibid., para. 25).

48. Despite protection under international and regional human rights instruments and national constitutions, the right to freedom of expression has suffered the most adverse restrictions under national security or anti-terrorism laws. In many instances, these laws have been used to criminalize dissent and suppress the right to hold States accountable. Provisions of laws on internal security, official secrets and sedition, among others, have been used to deny freedom of information to defenders and to prosecute them for their efforts to seek and disseminate information on the observance of human rights standards.

49. Other common restrictions and violations to the right to freedom of opinion and expression include: (a) the use of civil and criminal defamation and libel proceedings against defenders speaking out against human rights violations; (b) the adoption of laws restricting printing and publication; and (c) the censorship, suspension, closing or banning of media outlets.

[9] Ibid., para. 4.
[10] Ibid., para. 4.

50. Additionally, defenders and journalists are often targeted for investigating human rights abuses. They are subjected to threats, attacks and intimidation, and some have been abducted and/or killed. They have also been arrested and detained following the publication of letters calling for the improvement of the human rights situation, for publishing articles online criticizing governmental policies and for denouncing human rights violations. Women journalists and media professionals are also exposed as a result of their work. This group includes women investigative journalists working on human rights-related issues, women columnists advocating human rights reform, women reporters monitoring and reporting violations of human rights, and women bloggers.

VII. Right to protest

51. The right to protest entails the enjoyment of a set of internationally recognized rights that are reiterated in the Declaration on Human Rights Defenders, including freedom of opinion and expression, freedom of association, freedom of peaceful assembly and trade union rights such as the right to strike.

52. The protection of the right to protest comprises both negative and positive obligations. The State has a negative obligation to abstain from interfering and a positive obligation to protect rights holders in the exercise of this right, particularly when persons protesting hold unpopular or controversial views, or belong to minorities or other groups exposed to higher risks of attack and other forms of intolerance. Additionally, respecting the right to protest involves the obligation of States to take concrete steps to build, maintain and strengthen pluralism, tolerance and an open attitude to the expression of dissent in society.

53. The right to protest is an essential element of the right to participation in a democratic society and restrictions imposed on this right must be closely examined regarding their necessity and reasonableness. Restrictions may be imposed on public demonstrations, providing their purpose is to protect national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

54. Common restrictions and violations to the right to protest include: (a) bans and unjustified restrictions on demonstrations; (b) unnecessary requirements to obtain authorizations; (c) lack of remedies to appeal decisions denying the authorization to hold demonstrations; (d) legislation not complying with international human rights law; (e) legislation on counter-terrorism with definitions of "terrorism" that are so broad that they can jeopardize participation in public demonstrations; and (f) inadequacies in the legal framework on the right to strike, including the criminalization of the right to strike and the failure to incorporate the right to strike in domestic law.

55. Violations suffered by defenders as a consequence of their participation in protests range from threats following demonstrations to arbitrary arrest and detention, intimidation, ill-treatment, torture and excessive use of force by authorities. A cause for concern is the number of peaceful protesters who have been injured or killed during violent crackdowns by the authorities. The mandate holder has also identified specific protection needs concerning some groups of protestors, including women defenders and defenders working on lesbian, gay, bisexual and transgender rights; student activists; trade unionists; and defenders monitoring and

reporting on demonstrations. Defenders engaged in protests linked to demands for democratic reforms; the anti-globalization movement; election processes; peace demonstrations; and land rights, natural resources and environmental claims are often in need of specific protection.

VIII. Right to develop and discuss new human rights ideas

56. The right to develop and discuss new human rights ideas is enshrined in the Declaration on Human Rights Defenders as an important provision for the ongoing development of human rights. This right may be seen as an elaboration of the right to freedom of opinion and expression, the right to freedom of assembly and the right to freedom of association, which are protected under many regional and international instruments.[11] The Declaration on Human Rights Defenders affirms the right to develop and discuss new human rights ideas, and to advocate their acceptance in article 7.

57. Many of the basic human rights that today we take for granted took years of struggle and deliberation before they took final shape and became widely accepted. A good example is the long struggle of women in many countries to gain the right to vote. Today, we see the case of defenders working on lesbian, gay, bisexual and transgender rights. In many countries around the world, these activists are targeted for their work, harassed, and sometimes killed, because of their work in defending a different idea of sexuality. Similarly, women human rights defenders are more at risk of suffering certain forms of violence because they are perceived as challenging accepted sociocultural norms, traditions, perceptions and stereotypes about femininity, sexual orientation and the role and status of women in society.

58. Although the rights of women defenders and those working on women's rights or gender issues are not new human rights, in some contexts they may be perceived as new because they address issues that might challenge tradition and culture. Tradition and culture are not static, however, as the United Nations independent expert in the field of cultural rights has argued, saying that "cultures are constantly evolving, as are the concepts of human rights" (A/HRC/14/36, para. 34).

59. It is because of the visions of courageous defenders that human rights have developed and transformed our societies. These visionaries have held "that women deserve the same rights as men, that empires are not inevitable, that indigenous peoples are human beings, or that torture and genocide are ethically reprehensive and need not be tolerated. Similarly, they ask people to imagine that international norms can be established and that nation States need not be allowed to claim that however they wish to behave and treat people is strictly their own business."[12] However, these ideas often meet resistance, especially because they challenge the legitimacy of the status quo as well as sociocultural norms and traditions.

60. Nonetheless, ideas that "offend, shock or disturb" are protected under the right of freedom of expression. This is a crucial part of what is required for a "democratic

[11] See also "Protecting human rights defenders", Human Rights First, available from www.humanrightsfirst.org/our-work/human-rights-defenders/protecting-human-rights-defenders.

[12] Paul Gordon Lauren, *The Evolution of International Human Rights: Visions Seen* (University of Pennsylvania Press, 1998), p. 282.

society" to exist.[13] Pluralism, tolerance and broadmindedness are particularly important in a democratic society. Democracy does not simply mean that the views of the majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position. The State is the ultimate guarantor of the principle of pluralism, a role that entails positive obligations to secure the effective enjoyment of rights. These obligations are of particular importance for persons holding unpopular views or belonging to minorities, because they are more vulnerable to victimization.[14]

61. In this context, the right to develop and discuss new human rights ideas is an important provision to support and protect those defenders that advocate new visions and ideas of human rights.

IX. Right to an effective remedy

62. Article 9 of the Declaration provides for the right of everyone to benefit from an effective remedy and to be protected in the event of a violation of his or her human rights and fundamental freedoms. In the framework of the Declaration, the obligation to provide defenders with an effective remedy requires States to ensure a prompt and impartial investigation into the alleged human rights violations, the prosecution of the perpetrators, the provision of reparations, as well as the enforcement of decisions or judgements.

63. The right to an effective remedy also entails effective access to justice, which can involve not only judicial but also administrative or quasi-judicial mechanisms. Impartial investigations and the prosecution of perpetrators require an effective and independent judiciary. In many instances, however, weaknesses in the judicial system and in the legal framework have prevented defenders from seeking and obtaining justice. States should take all necessary steps to ensure that violations against defenders are brought before tribunals or other complaints mechanisms, such as national human rights institutions or truth and reconciliation mechanisms.

64. Reparations are also a fundamental aspect of the right to an effective remedy. The obligation to provide an effective remedy is not fulfilled without reparation to individuals whose rights have been violated. In addition to compensation, reparations can involve "restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations".[15]

65. Nevertheless, the information received by the mandate holder often illustrates the lack of effective response by authorities to defenders, which has resulted in impunity for those abusing their rights. Judicial authorities have shown an alarming lack of diligence in investigating cases of abuse against defenders and leniency towards suspected perpetrators, especially members of the security and armed

[13] Nowak, United Nations Covenant, p. 505.

[14] Bączkowski and Others v. Poland (Application No. 1543/06), European Court of Human Rights, Chamber judgment of 3 May 2007.

[15] Human Rights Committee, general comment No. 31 concerning the nature of the general legal obligations imposed on States parties to the International Covenant on Civil and Political Rights, para. 16.

forces. Similarly, defenders have raised impunity as one of the main concerns regarding violations committed by non-State actors. In many instances, complaints by defenders about violations of their rights are either never investigated or dismissed without justification.

66. The mandate holder has also repeatedly received information about the situation of women defenders working on issues of impunity and access to justice, including witnesses and victims of human rights violations seeking redress, as well as the lawyers, individuals and organizations representing or supporting them. This group appears to be particularly at risk in certain countries.

67. The Special Rapporteur is greatly concerned by these trends, which reveal that impunity for human rights abuses against defenders remains unacceptably widespread. Ending impunity is a necessary condition to ensure the security of defenders.

X. Right to access funding

68. The right to access funding is an inherent element of the right to freedom of association, which is contained in major human rights instruments. The Declaration on Human Rights Defenders explicitly recognizes the right to access funding as a self-standing substantive right under article 13. The wording of article 13 covers the different phases of the funding cycle. States are under an obligation to permit individuals and organizations to seek, receive and utilize funding. The Declaration requires States to adopt legislative, administrative or other measures to facilitate or, at a minimum, not to hinder the effective exercise of the right to access funding.

69. Article 13 of the Declaration also specifies that the funds must be used "for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means". In addition, article 3 of the Declaration establishes that while domestic legislation is the proper legal framework to guarantee the enjoyment of the right to access funding, legislation must be consistent with international human rights norms and standards.

70. Concerning the origin of the funds, the Declaration protects the right to receive funding from different sources, including foreign ones. Given the limited resources available for human rights organizations at the local level, restrictions on access to international funding can gravely affect the ability of defenders to carry out their work. In some cases, these limitations can threaten the very existence of organizations. Governments should allow access by human rights defenders, in particular non-governmental organizations, to foreign funding as a part of international cooperation, to which civil society is entitled to the same extent as Governments.

71. Many countries have put in place legislation that significantly restricts the ability of human rights organizations to access funding, including restrictions on the origin of the funds and the requirement for prior State authorization for non-governmental organizations to receive funds from foreign donors. Some Governments have introduced a complete prohibition on certain types of funding, for example funding coming from United Nations agencies or other bilateral donors. In other instances, organizations working in particular fields — such as governance issues — are prohibited from receiving foreign funding.

72. Governments also place restrictions on how funds can be used and make use of tax laws and regulations to unduly hinder the work of human rights organizations. In particular, non-governmental organizations that are critical of their Governments often face extensive tax scrutiny and abusive use of fiscal procedures by the relevant authorities.

73. In addition to restrictive legislation and practices, the political environment in a given country can undermine access to funding, in particular for women's groups. Women's groups have indicated that patriarchal societies, sexism and authoritarian regimes are some of the most common structural challenges to accessing funding used to support their work.[16]

XI. Permissible derogations and the right to defend human rights

74. Article 4 (1) of the International Covenant on Civil and Political Rights states: "In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin."

75. Two fundamental conditions must be met before a State invokes article 4 of the Covenant: the situation must amount to a public emergency that threatens the life of the nation, and the State must have officially proclaimed a state of emergency. An additional fundamental requirement is that such measures must be limited to the extent strictly required by the exigencies of the situation. This relates to the duration, geographical coverage and material scope of the state of emergency and any measures of derogation adopted because of the emergency. Further, article 4 (1) requires that no measure derogating from the provisions of the Covenant can be inconsistent with the State's other obligations under international law, particularly the rules of international humanitarian law, and that States parties may in no circumstances invoke article 4 of the Covenant as justification for acting in violation of humanitarian law or peremptory norms of international law.[17]

76. The significance of the Declaration on Human Rights Defenders lies in its provision of legitimacy and protection to certain activities that protect and promote universally recognized human rights and fundamental freedoms. The central focus of the Declaration is not the recognition of these rights, but their reiteration and the protection of activities for their promotion. The Declaration extends protection to persons only to the extent of their engagement in these activities. These are important distinctions to take into account when considering any arguments regarding derogations, limitations and restrictions on rights in the emergency or security context. Even if some rights or freedoms are restricted in a situation of

[16] FundHer Brief 2008, "Money watch for women's rights movements and organizations", p. 17 (Association for Women's Rights in Development, 2008).

[17] Human Rights Committee, general comment No. 29 concerning article 4 of the International Covenant on Civil and Political Rights (derogations during a state of emergency).

emergency, or under security legislation, or because of any other requirements, any activity relating to the monitoring of these rights can be neither restricted nor suspended.

77. In this context, derogations from and exceptions to applicable human rights standards, including the Declaration, should be required to meet a higher standard when they are applied to human rights defenders. At times of great risk to human rights, it is essential that there is some form of independent monitoring and accounting of these rights. It would be contrary to the spirit of international human rights standards to argue that at these moments of greater risk the right to defend human rights can be legally silenced.

XII. Conclusions and recommendations

78. **The Special Rapporteur remains concerned that more than a decade after the adoption of the Declaration on Human Rights Defenders, although some progress has been made, many countries continue to pass laws and regulations that restrict the space for human rights activities and that are incompatible with international standards and with the Declaration in particular. Even where efforts are made to adopt laws that are in line with international standards, their ineffective implementation often remains a problem.**

79. **The Declaration is an instrument that is not sufficiently known, either to Governments or to human rights defenders, and more needs to be done. The Special Rapporteur hopes that, by raising awareness about the Declaration, the present report will contribute to the development of a safer and more conducive environment for defenders to be able to carry out their legitimate work.**

80. **After an analysis of the rights provided for in the Declaration, the necessary aspects to ensure their implementation and the main challenges faced by human rights defenders, the Special Rapporteur would like to set forth the following recommendations:**

Right to be protected

81. **States should refrain from stigmatizing the work of human rights defenders and should recognize the role they play, including women defenders and those working on women's rights or gender issues, as well as the legitimacy of their activities in public statements. Such recognition is a first step for preventing or reducing threats and risks against them.**

82. **States should also ensure that violations against defenders, including women defenders and those working on women's rights or gender issues, committed by State and non-State agents are promptly and impartially investigated and that those responsible are adequately punished.**

83. **States should adopt national laws on the protection of defenders, with a specific reference to the work of women human rights defenders. These laws should be developed in consultation with civil society and with technical advice from relevant international agencies.**

84. **States should refer to the minimum guidelines concerning protection programmes for human rights defenders that the Special Rapporteur issued in 2010 (A/HRC/13/22, para. 113).**

85. **Non-State actors and private entities should abide by the Declaration on Human Rights Defenders and refrain from endangering the safety of defenders and obstructing their work. In addition, national and transnational corporations should develop human rights policies in cooperation with defenders, including monitoring and accountability mechanisms related to violations of the rights of defenders.**

86. **National human rights institutions are encouraged to prioritize the protection of defenders in their agenda and establish focal points for defenders. These institutions should investigate complaints made by defenders and disseminate the Declaration.**

87. **The Office of the United Nations High Commissioner for Human Rights is encouraged to develop a comprehensive strategy to protect defenders, including against threats and reprisals by non-State actors.**

Right to freedom of assembly

88. **States should favour regimes of notification rather than authorization of assemblies and, when authorization is required, States should make sure that it is provided in accordance with the principle of non-discrimination. In this connection, States must ensure that there are satisfactory review procedures for complaints of restrictions being imposed on assemblies.**

89. **States should ensure that law enforcement officials are trained in international human rights standards and international standards for the policing of peaceful assemblies, including the Declaration on Human Rights Defenders, the Code of Conduct for Law Enforcement Officials, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and other relevant treaties, declarations and guidelines.**

90. **States should enforce a code of conduct for law enforcement officials, particularly with regard to crowd control and the use of force, and ensure that the legal framework contains effective provisions for the oversight and accountability of officials, especially with regard to their responses to public protest actions.**

91. **All allegations of indiscriminate and/or excessive use of force by law enforcement officials should be properly investigated and appropriate action taken against the responsible officials.**

92. **States must take the necessary steps to guarantee the effective exercise of the right to freedom of assembly for all individuals without discrimination of any kind. In many countries, women defenders often face more risks when participating in collective public action because of perceptions of the traditional role of women in some societies. Those working on women's rights and gender issues also face more risks.**

93. **States should review their legal framework to ensure that national legislation is in conformity with the Declaration and other international**

commitments and international standards relating to the right to freedom of assembly in accordance with article 2 (2) of the Declaration.

Right to freedom of association

94. **States should take the necessary steps to guarantee the effective exercise of the right to freedom of association for all individuals without discrimination of any kind.**

95. **States should not interfere with the internal management or activities of non-governmental organizations. Domestic laws should avoid containing lists of permitted or prohibited activities for civil society organizations and non-governmental organizations should be able to carry out activities in defence of human rights.**

96. **States must put in place a single, publicly accessible register for civil society organizations. Registration bodies should be independent from the Government and should include representatives of civil society.**

97. **Regarding registration laws and procedures, the Special Rapporteur recommends that:**

(a) **Non-governmental organizations be allowed to carry out collective activities without having to register and that States do not impose criminal sanctions for participating in unregistered entities;**

(b) **Laws governing the creation, registration and functioning of civil society organizations be written and establish clear, consistent and simple criteria to be met in order to register. Non-governmental organizations that meet the prescribed criteria should be immediately able to register as legal entities;**

(c) **States ensure that existing laws and regulations are applied in an independent and transparent manner. Laws should be clear about the status of organizations in the period between the request for registration and the final decision. Pending such a final decision, human rights organizations should be free to carry out their activities;**

(d) **In the event of the adoption of a new law concerning civil society organizations, all previously registered non-governmental organizations be considered as continuing to operate legally and be provided with fast track procedures to update their registration. Unless a new law is adopted, existing laws governing the registration of civil society organizations should not require that organizations re-register periodically;**

(e) **The registration process be prompt, accessible and inexpensive. States should not impose costs related to the registration process that make it difficult for non-governmental organizations to maintain their registration, nor should they place other unsustainable burdens upon them;**

(f) **States guarantee the right to appeal against any denial of registration. States should also ensure an effective and prompt remedy against any rejection of application, as well as an independent judicial review of the decisions of the registration authority.**

Right to access and communicate with international bodies

98. **States should refrain from all acts of intimidation or reprisal against defenders who have sought to cooperate or have cooperated with United Nations human rights bodies, those who have availed themselves of procedures established by the United Nations, those who have provided legal assistance to victims, those who have submitted communications under procedures established by human rights instruments, and those who are relatives of victims of human rights violations.**

99. **States must protect individuals and members of groups who wish to cooperate with the United Nations, its representatives and mechanisms. States also have a duty to end impunity for perpetrators of violence against individuals who have sought to cooperate with the United Nations and to provide remedies for victims.**

100. **States should refrain from imposing travel restrictions and guarantee defenders access to United Nations bodies and to have the possibility to present oral and written reports and to have those reports given due consideration.**

Right to freedom of opinion and expression

101. **States should take all the necessary steps to ensure the effective exercise of the right to freedom of opinion and expression for all individuals and social sectors, without discrimination of any kind.**[18]

102. **States should ensure that security legislation is not applied against human rights defenders as a means to prevent their human rights work. States must guarantee the possibility for human rights defenders to effectively monitor the application of security legislation. In the context of the arrest and detention of a person under security legislation, defenders should, at a minimum, have regular access to the detainee and to basic information on the substance of the charges on which the detainee is held.**

103. **States must ensure that laws and policies reflect the right of defenders to access information and places of alleged violations and that the relevant authorities are trained to give effect to this right.**

104. **States should also ensure that information held by non-State actors — in particular private companies — that is linked to public interest is made available to the public. States should establish an effective and independent mechanism for this purpose.**

105. **States should refrain from criminalizing, limiting or censoring the exercise of freedom of expression. Except for the permissible and legitimate restrictions established in international human rights law, any measure of this kind should be abolished.**[19]

106. **Defamation and similar offences should be dealt with under civil law and the fines to be paid as compensation should be sufficient to allow for the**

[18] Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (A/HRC/14/23, para. 119).

[19] Ibid., para. 120.

continuation of professional activities. Prison sentences should be excluded for offences regarding the reputation of others such as libel and defamation.[20]

107. **States must abstain from introducing new legislation with the same aim as defamation laws under different legal terminology such as disinformation and dissemination of false information. Criticism of the nation, its symbols, the Government, its members and their action should never be seen as an offence.**[21]

Right to protest

108. **States should enforce a code of conduct on law enforcement officials, particularly with regard to crowd control and the use of force, and ensure that the legal framework provides for the accountability of officials concerning their responses to public protests.**

109. **States should take all necessary measures to protect defenders during protests, refrain from the use of excessive force against protesters and adhere to international human rights norms when arresting persons in the context of peaceful demonstrations.**

110. **States must ensure that anti-terrorism legislation and measures are not applied against human rights defenders to hamper their human rights work.**

111. **States are encouraged to take the following measures to address the protection needs of the following groups of defenders:**

(a) Women defenders:

(i) Investigate and prosecute cases of gender-based violence against women defenders during demonstrations;

(ii) Train and instruct law enforcement officials on protection measures to be taken with regard to children taking part in demonstrations with their mothers;

(b) Defenders working on lesbian, gay, bisexual and transgender rights:

(i) Hold accountable authorities taking unlawful decisions banning demonstrations;

(ii) Ensure the protection of participants in gay pride parades before, during and after marches from violence by counter-protestors;

(iii) Train law enforcement officials on appropriate conduct, particularly in relation to the implementation of the non-discrimination principle and respect for diversity;

(c) Student activists:

Take steps to create a conducive environment to allow children and young adults to associate and express views on matters affecting them as well as on broader human rights issues;

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[20] Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (A/HRC/4/27, para. 81).

[21] Ibid., para. 82.

(d) Trade unionists:

(i) Acknowledge trade unionists as human rights defenders entitled to the rights and protection set out in the Declaration on Human Rights Defenders;

(ii) Review restrictive legislation on the right to strike, including provisions with very broad definitions of essential services that restrict or prevent strikes by large sectors of civil servants;

(e) Defenders and journalists monitoring demonstrations:

Allow human rights defenders to perform their monitoring role and grant media access to assemblies to facilitate independent coverage.

Right to develop and discuss new ideas

112. **States should recognize a defender's right to promote and protect new human rights ideas (or ideas that are perceived as new) and to advocate for their acceptance. States should publicly recognize the legitimacy of defenders' activities as a first step to preventing or reducing violations against them.**

113. **States must take necessary measures to create an environment of pluralism, tolerance and respect in which all human rights defenders can carry out their work without risk to their physical and psychological integrity or to any form of restriction, harassment, intimidation or fear of persecution.**

114. **States should take additional measures to ensure the protection of defenders who are at greater risk of facing certain forms of violence because they are perceived as challenging accepted sociocultural norms, traditions, perceptions and stereotypes about femininity, sexual orientation and the role and status of women in society.**

Right to effective remedy

115. **States should ensure prompt and independent investigations of all violations against defenders, the prosecution of alleged perpetrators and the imposition of adequate penalties. States should also ensure that victims have access to justice and effective remedies, including appropriate compensation.**

116. **States should ensure accountability of those who have committed human rights violations, especially against human rights defenders, by means of appropriate disciplinary, civil and criminal proceedings. The application of legal penalties for false prosecution of defenders should be considered.**

117. **States must ensure that public officials and law enforcement officers who are responsible for the prevention, investigation and prosecution of violations against defenders receive adequate training on the Declaration and on the specific protection needs of defenders.**

118. **States must respond to communications sent pursuant to the mandate on human rights defenders in a timely and comprehensive manner. A good practice for replies is to provide information on the measures taken to redress the individual situation, as well as on the initiatives taken to prevent the recurrence of similar situations.**

Right to access to funding

119. **States should ensure and facilitate by law access to funds, including from foreign sources, for the purpose of defending human rights.**

120. **States should refrain from restricting the use of funds, providing they comply with the purposes expressly established in the Declaration of promoting and protecting human rights and fundamental freedoms through peaceful means. States should not require prior governmental authorization to apply for or receive funding from abroad.**

121. **States must allow access by non-governmental organizations to foreign funding and restrict such access only in the interest of transparency and in compliance with generally applicable foreign exchange and customs laws. States should therefore review existing laws to facilitate access to funding.**

122. **States must allow non-governmental organizations to engage in all legally acceptable fund-raising activities under the same regulations that apply to other non-profit organizations in general.**

123. **States should prohibit extensive tax scrutiny and abusive use of fiscal procedures by the relevant authorities.**